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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,983	06/08/2005	Peter Osypka	SMB-PT143 (PC 04 234 M US	9424
3624	7590	03/16/2006	EXAMINER	
VOLPE AND KOENIG, P.C. UNITED PLAZA, SUITE 1600 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103			FAULCON JR, LENWOOD	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 03/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/537,983	Applicant(s) OSYPKA, PETER	
	Examiner Lenwood Faulcon, Jr.	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/8/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As written, claim 4 recites an electrode arrangement comprising "at least one ring-like projection (11), umbrella-like projection, and/or barb-like projection (12)." However, figures 1-9, particularly figures 4-6 do not disclose an arrangement comprising all three or even two of these limitations. Examiner believes that Applicant intended claim 4 to recite these limitations in the alternative. Examiner suggests amended claim 4 by deleting the phrase "at least" (line 6 page 3), and deleting the word "and" (line 7 page 3).

Claim Rejections - 35 USC § 102/103

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Alt (U.S. Patent No. 5,411,527), or in the alternative are rejected under 35 U.S.C. 103(a) as being unpatentable over Alt (U.S. Patent No. 5,411,527).

Alt teaches of defibrillation electrodes that are arranged in an epicardial position by use of a puncture needle and an associated introducing catheter (col. 7 lines 13-16). Alt also teaches of the introducing catheter's lumen having a diameter large enough for the electrode to be introduced through the lumen (col. 14 lines 20-25).

Examiner takes the position that although Alt teaches of defibrillator electrode, these electrodes are capable of being used as pacemaker electrodes, since they are inherently capable of providing pacing stimulation. Or in the alternative, Examiner takes the position that it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the teachings of Alt in using the defibrillation electrodes as pacemaker electrodes.

Claim Rejections - 35 USC § 103

5. Claims 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alt (U.S. Patent No. 5,411,527) as applied to claims 1-2 above, and further in view of Vane et al. (U.S. Patent No. Vane et al. (U.S. Patent No. 6,311,087).

Vane et al. teaches of a cardiac pacemaker/defibrillator (col. 3 lines 45-55). Vane et al. also teaches of the system capable of being of a biventricular design (col. 3 lines 45-55) and further teaches of using one or more epicardial lead wires (col. 4 lines 5-8). Vane et al. also teaches of the use of a corkscrew or a barb for securing an electrode to the patient's heart (col. 4 lines 22-25).

Examiner takes the position that a corkscrew anchor has a ring-like projection and comprises several ring-like projections, in which each ring-like projection could be individual anchors. Examiner also takes the position that a barb anchor could be interpreted as an umbrella-like projection. Examiner further takes the position that it would have been obvious to one having ordinary skill in the art to modify the system as taught by Vane et al. to include several anchors to increase the likelihood of the electrode remaining attached to the heart.

It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the teachings of Alt and Vane et al. Alt and Vane et al. both teach of cardiac rhythm management devices and thus teach of analogous arts. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the system as taught by Alt to include various anchoring mechanisms as taught by Vane et al., to secure the electrode to a patient's heart. It would have also been obvious to one having ordinary skill in the art to modify the system as taught by Alt to include biventricular pacing as taught by Vane et al. to provide various treatments as deemed necessary. Therefore, it would have been obvious to one having ordinary skill in the art to combine the teaching of Alt and Vane et al. to have the limitations of claims 3-7

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bolduc (U.S. Patent No. 3,737,579), Cohen (U.S. Patent No. 4,991,578), Williams et al. (U.S. Patent No. 5,246,014), Stokes et al. (U.S. Patent No.

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5,443,492), Struble et al. (U.S. Patent No. 6,070,101), Alferness et al. (U.S. 2002/0082647).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lenwood Faulcon, Jr. whose telephone number is 571-272-6090. The examiner can normally be reached on Monday-Thursday from 9 to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes, can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lenwood Faulcon, Jr.



George Manuel

Primary Examiner